



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,737	09/26/2001	Eric Levy-Abegnoli	FR920000040US1	9268

45503 7590 10/03/2005

DILLON & YUDELL LLP  
8911 N. CAPITAL OF TEXAS HWY.,  
SUITE 2110  
AUSTIN, TX 78759

EXAMINER
----------

LIN, KELVIN Y

ART UNIT	PAPER NUMBER
----------	--------------

2142

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**MAILED**

OCT 03 2005

Technology Center 2100

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/963,737  
Filing Date: September 26, 2001  
Appellant(s): LEVY-ABEGNOLI ET AL.

\_\_\_\_\_  
Levy-Abegnoli et al.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/21/05.

h

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

Claims 21-32 are rejected under 35 USC 102(e) as being anticipated by Adelman et al., (US Patent No. 6078957).

Regarding claim 21, Adelman teaches a method of load balancing connections between a plurality of servers and a plurality of clients, wherein a plurality of load balancers couple said plurality of servers and said plurality of clients, said method comprising:

- in response to a receiving load balancer out of said plurality of load balancers receiving a communication from at least one of said plurality of clients, determining a primary load balancer and a backup load balancer for handling said communication (Adelman, col.6, l.54-58, col.7, l.40-41, col.6, l.50-60, col.8, l.23-30);
- storing an identity of said primary load balancer and said backup load balancer corresponding to said communication in each of said plurality of load balancers (Adelman, col.7, l.50-56, l.67, col.8, l.15-35);
- forwarding said communication to said primary load balancer for transmission to at least one of said plurality of servers (Adelman, col.9, l.27-30); and
- in response to determining said primary load balancer is not available, forwarding said communication to said determined backup load balancer for transmission to at least one of said

plurality of servers (Adelman, col.6, l. 62-67, col.7, l.3-4, col.9, l.17-20).

Regarding claim 22, Adelman further discloses the method of Claim 21, wherein said determining further includes:

- calculating a plurality of scores, wherein each of said plurality of scores corresponds to a respective one of said plurality of load balancers (Adelman, col.8, l.40-43);
- ranking said plurality of scores from a highest score to a lowest score (Adelman, col.8, l.40);
- designating as said primary load balancer one of said plurality of load balancers corresponding to said highest score (Adelman, col.8, l.9-13); and
- designating as said backup load balancer one of said plurality of load balancers corresponding to a second highest score (Adelman, col.8, l.40-43).

Regarding claim 23, Adelman further discloses the method of Claim 21, further comprising: in response to determining said receiving load balancer is said primary load balancer, transmitting said communication to at least one of said plurality of servers (Adelman, col.9, l.27-30).

Regarding claims 24-26 have similar limitation as claims 21-23.

Therefore, claims 24-26 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

Art Unit: 2142

Regarding claims 27-29 have similar limitation as claims 21-23.

Therefore, claims 27-29 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

Regarding claims 30-32 have similar limitation as claims 21-23.

Therefore, claims 30-32 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

#### **(10) Response to Argument**

In regard to appellant's argument on issue under 35 U.S.C. 102(e), that claim 21 recites – "...determining a primary load balancer and a backup load balancer for handling said communication"; and " where both of their identities are known".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., where both of their identities are known) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Adelman teaches the identity of the primary load balancer as master cluster member which calculates and stores a packet loss average value using the sequence number of the client keepalive message and the backup load balancer as non-master

Art Unit: 2142

cluster member. As on col.8, lines 23-30, Adelman teaches how the backup load balancer activates from the watchdog timer.

Furthermore, Adelman teaches the backup unit performing in the clustering process that normally when a new hardware unit is added to an existing cluster the administrator request security authority issues a certificate to the new unit and send a copy of the certificate to the master unit in the cluster. If the master unit does match the certificate from the join message with a certificate it holds in its memory it sends "OK to join" message. If a OK to join message is received then this unit is designated a cluster member (client or non-master). And each cluster member has a master-watching timer (Adelman, col.6, lines 50-60) . Therefore this process determines a master (primary) and a non-master (backup) load balancer for handling said communication.

In the essence of the clustering is to connect two or more computers together in such a way that they behave like a single computer. The clustering member act as one main computer to communicate with outside entities even though the main member already been changed to other backup member.

In regard to appellant's argument on issue of claim 21 recites – "storing an identity of said primary load balancer and said backup load balancer corresponding to said communication in each of said plurality of load balancers".

Adelman, in col. 8, lines 15-35, calculates and stores as to the claimed storing an identity of said primary load balancer and said backup load balancer corresponding to said communication in each of said plurality of load balancers. If the client is from this master's cluster the master calculate and stores a packet loss average value using the

Art Unit: 2142

sequence number of the client keepalive message and the calculated adaptive keepalive interval. The master then resets the watchdog times for this client.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kelvin Lin

Examiner


Art Unit 2142

 9/28/05

Conferees:

Andrew Caldwell

SPE 2142

  
**ANDREW CALDWELL**  
**SUPERVISORY PATENT EXAMINER**

Kamini Shah

Primary Examiner, 2142



**KAMINI SHAH**  
**PRIMARY EXAMINER**